



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

ELP
Docket No. 4021-00
8 November 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 1 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy on 10 December 1958 for six years as an AN (E-3). At the time of your reenlistment, you had completed nearly five years of prior active service.

The record reflects that you served for 14 months without incident. However, during the 26 month period from February 1960 to April 1962 you received four nonjudicial punishments (NJP) and were convicted by a summary court-martial. Your offenses consisted of failure to go to your appointed place of duty, two brief periods of unauthorized absence (UA), misbehavior as a sentinel, absence from your duty section, and breaking restriction.

On 20 August 1963 you were arrested by civil authorities on a charge of arson. You were convicted on 9 January 1964 of fourth degree arson and sentenced to a fine of \$500 or 90 days in jail. You paid the fine. The maximum penalty for this offense under

the Uniform Code of Military Justice (UCMJ) was 10 years of confinement at hard labor.

On 25 February 1964 you were notified that you were being recommended for an undesirable discharge by reason of misconduct due to conviction by civil authorities. You submitted a statement in your own behalf stating that you would like to finish your enlistment. Thereafter, the commanding officer (CO) recommended an undesirable discharge. In his recommendation, the CO noted that prior to your arrest by civil authorities, you and another Sailor were drinking at an out-of-bounds night club where the two of you got into argument with the management and were evicted. You and the other Sailor claimed to have been drinking excessively and, after your eviction, decided to set fire to the night club. Both of you proceeded to what was believed to be the back door of the club, but in fact was the business next door. The CO stated that you placed paper at the bottom of the door, lit it and ran. Shortly thereafter, you and the other Sailor returned to put the fire out. In the process, you were both apprehended by local police and you subsequently pled guilty to fourth degree arson.

On 18 March 1964, an enlisted performance evaluation board convened in the Bureau of Naval Personnel and recommended that you be separated with an undesirable discharge by reason of misconduct due to civil conviction. The Chief of Naval Personnel approved the recommendation and you were so discharged on 3 April 1964.

Applicable regulations authorized the discharge of enlisted personnel by reason of misconduct due to conviction by civil authorities of an offense for which the maximum penalty under the UCMJ was confinement in excess of one year, or which involved moral turpitude.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your limited education and the fact that it has been more than 36 years since you were discharged. The Board noted your letter to the clerk of the circuit court requesting a copy of the court records regarding the incident which led to your discharge, and the clerk's response that a search of court records found no criminal charges in your name. The Board also noted your statement that you are disabled, and the contentions that you were unjustly discharged and there is no record of your ever being convicted of a crime. The Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization of your discharge given your record of four NJPs, a summary court-martial conviction, and conviction by civil authorities of fourth degree arson. The fact that the circuit court no longer has a record of

the offense of which you were convicted does not change the basis for which you were discharged. While this may have been deemed a misdemeanor by civil authorities, this offense could have resulted in confinement in excess of one year and a dishonorable if you had been convicted by court-martial. The Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director